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Second session
Geneva, 10 July 1996

REPORT OF THE AD HOC GROUP ON ARTICLE 13 ON THE WORK OF ITS SECOND SESSION, HELD AT GENEVA ON 10 JULY 1996

CONTENTS

		Paragraphs	Page
I.	OPENING OF THE SESSION (Agenda item 1)	1-2	3
II.	ORGANIZATIONAL MATTERS (Agenda item 2)	3-4	3
	A. Adoption of the agenda	3	3
	B. Organization of the work of the session	4	4
III.	ELECTION OF OFFICERS OTHER THAN THE CHAIRMAN (Agenda item 3)	5-6	4

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		Paragraphs	Page
IV.	PROGRAMME OF WORK DURING THE SESSION (Agenda item 4)	7-15	4
	A. Report of the Chairman of the AG13 on the panel presentation and discussion	7-9	4
	B. Questionnaire on the establishment of a multilateral consultative process under Article 13	10-12	5
	C. Consideration of draft decisions to be remitted to the Conference of the Parties at its second session	13-15	5
V.	FUTURE WORK OF THE GROUP (Agenda item 5)	16-17	7
VI.	REPORT ON THE SESSION (Agenda item 6)	18-19	7

Annex

Report of the Chairman of the AG13 on the panel presentation and discussion ... 9

I. OPENING OF THE SESSION
(Agenda item 1)

1. The second session of the Ad Hoc Group on Article 13 (hereinafter referred to as "the AG13") was held at Geneva on 10 July 1996. The session was convened in accordance with decision 20/CP.1 of the Conference of the Parties at its first session (FCCC/CP/1995/7/Add.1) and at the request of the AG13 at its first session.

2. The Chairman of the AG13, Mr. Patrick Szell (United Kingdom of Great Britain and Northern Ireland), opened the session. He welcomed the delegates and observers, noting that there would be only one meeting of the AG13 at its second session and that the meeting would be of an organizational nature, thus enabling the Group to take up its formal work more efficiently at its third session in December.

II. ORGANIZATIONAL MATTERS
(Agenda item 2)

A. Adoption of the agenda
(Agenda item 2 (a))

3. At its second session the AG13 adopted the following agenda:

1. Opening of the session.

2. Organizational matters:

   (a) Adoption of the agenda;

   (b) Organization of the work of the session.

3. Election of officers other than the Chairman.

4. Programme of work during the session:

   (a) Report of the Chairman of the AG13 on the panel presentation and discussion;

   (b) Questionnaire on the establishment of a multilateral consultative process under Article 13;

   (c) Consideration of draft decisions to be remitted to the Conference of the Parties at its second session.

5. Future work of the Group.

6. Report on the session.

B. Organization of the work of the session
(Agenda item 2 (b))

4. The Chairman, in introducing the work of the session, referred to the relevant documentation listed in the provisional agenda and annotations of the Conference of the Parties (FCCC/CP/1996/1, annex IV, para. 4). The AG13 agreed to proceed on the basis of the proposed schedule of work contained in FCCC/CP/1996/1, annex IV, para. 6.

III. ELECTION OF OFFICERS OTHER THAN THE CHAIRMAN
(Agenda item 3)

5. The Chairman recalled that rule 27 of the draft rules of procedure of the Conference of the Parties, as applied, provide for the election of a Bureau to the AG13, and noted that the Vice-Chairman and the Rapporteur had not yet been elected. The Chairman elaborated on the status of the consultations being undertaken by the President of the Conference of the Parties with regard to the election of outstanding officers of the subsidiary bodies, other than the Ad Hoc Group on the Berlin Mandate (AGBM). In this regard, the President was consulting with the regional coordinators with a view to electing these remaining officers in a plenary meeting of the Conference of the Parties as part of an overall package.

6. In the light of the above, the Chairman asked whether any members of the Group wished to provide nominations for the offices of Vice-Chairman and Rapporteur of the AG13 which could be forwarded to the President of the Conference of the Parties. There were none.

IV. PROGRAMME OF WORK DURING THE SESSION
(Agenda item 4)

A. Report of the Chairman of the AG13 on the panel presentation and discussion
(Agenda item 4(a))

1. Proceedings

7. Introducing sub-item 4(a), the Chairman expressed his satisfaction at the large participation at the panel presentation and discussion the previous day. He remarked on the excellent quality of the comments by the invited presenters and discussants and the level of understanding and concern of the participants. He expressed his appreciation to the speakers

for their valuable contributions, and to the Convention secretariat for its organization of the panel presentation and discussion.

8. Presenting his report on the panel presentation and discussion, he stressed that it was not intended to be exhaustive but was, rather, an overview of his impressions. Statements were made by representatives of four Parties under this item.

2. Conclusions

9. The AG13 accepted the suggestion by one Party to add a clarifying sentence to the introduction of the report on the panel presentation and discussion. The Group agreed to have the Chairman's report, as modified, annexed to the present report.

B. Questionnaire on the establishment of a multilateral consultative process under Article 13

(Agenda item 4(b))

1. Proceedings

10. The Chairman invited the representative of the Convention secretariat to introduce the synthesis of responses to the questionnaire on the establishment of a multilateral consultative process under Article 13 (FCCC/AG13/1996/1) prepared for consideration by the Group under sub-item 4(b).

11. A statement under this sub-item was made by the representative of one Party speaking on behalf of the European Community and its member States.

2. Conclusions

12. The AG13 noted, with approval, the document prepared by the Convention secretariat and agreed that it would form a useful basis for substantive discussions at the third session of the AG13.

C. Consideration of draft decisions to be remitted to the Conference of the Parties at its second session

(Agenda item 4(c))

1. Proceedings

13. Introducing this sub-item, the Chairman pointed to the necessity of preparing a draft decision, for adoption by the Conference of the Parties at its second session, authorizing the Group to continue meeting. The Chairman also noted the possible role of the AG13 in

examining, in cooperation with the Ad Hoc Group on the Berlin Mandate, ways in which the multilateral consultative process could apply to any protocol or another legal instrument that AGBM developed.

14. Statements under this item were made by the representatives of 16 Parties, including one speaking on behalf of the European Community and its member States.

2. Conclusions

15 The Group decided to recommend the following decisions on the future of its work, and on the linkage between the AG13 and AGBM, for adoption by the Conference of the Parties at its second session:

(a) Future work of the Ad Hoc Group on Article 13

The Conference of the Parties,

Recalling Article 13 of the United Nations Framework Convention on Climate Change, and decision 20/CP.1,

Having considered the report of the Ad Hoc Group on Article 13 on its first session, in which the Group concluded that the consideration of a multilateral consultative process and its design would take considerable time and would not be completed before the close of the second session of the Conference of the Parties,

1. *Decides* that the work of the Group should continue beyond the second session of the Conference of the Parties;

2. *Requests* the Group to report to the Conference of the Parties at its third session on the progress of its work, if its work is not completed by that time;

3. *Further requests* that, if the Group's work has been completed by the third session of the Conference of the Parties, it should, in accordance with decision 20/CP.1, provide the Conference of the Parties with a report on its findings.

(b) Linkage between the Ad Hoc Group on Article 13 and the Ad Hoc Group on the Berlin Mandate

The Conference of the Parties,

Recalling Article 13 of the United Nations Framework Convention on Climate Change and the work being done by the Ad Hoc Group on Article 13,

Recalling also the work of the Ad Hoc Group on the Berlin Mandate,

Decides that the Ad Hoc Group on the Berlin Mandate may, in its consideration of a multilateral consultative process, seek such advice as may be deemed necessary from the Ad Hoc Group on Article 13 on this matter.

V. FUTURE WORK OF THE GROUP
(Agenda item 5)

1. Proceedings

16. Under this item the Convention secretariat indicated that arrangements had been made to convene the third session of the AG13 in Geneva from 16 to 18 December and that a fourth session of the AG13 could be convened for three days during the period between 27 February and 7 March 1997, subject to the review of the calendar of meetings by the Conference of the Parties. The Group confirmed that, as far as possible, the scheduling of its sessions should avoid overlapping with the sessions of the AGBM. The sixth session of the AGBM is scheduled for 3 to 7 March 1997.

2. Conclusions

17. There were no statements under this item, and the Chairman indicated that the item had been duly noted by the Group.

VI. REPORT ON THE SESSION
(Agenda item 6)

18. In view of the brevity of the second session of the AG13 and given the fact that the second session of the Conference of the Parties was already under way, the Group agreed that the Chairman should prepare the report of the session, with the assistance of the secretariat, and to include therein the decisions and conclusions adopted at the session. It was also agreed that the report would be remitted to the Conference of the Parties for its consideration at its second session.

19. The Chairman thanked the participants for their cooperation and constructive inputs, and the Convention secretariat for its support and assistance. He declared the second session of the AG13 closed.

Annex

REPORT OF THE CHAIRMAN OF THE AG13 ON THE PANEL PRESENTATION AND DISCUSSION

The panel presentation and discussion was convened on the morning of 9 July 1996. Presentations on existing consultative, non-compliance and dispute settlement procedures were made by Ms. Cleo Doumbia-Henry, Legal Adviser, International Labour Organisation; Mr. Peter Morrison, Senior Legal Officer, World Trade Organization; Ms. Soussan Raadi-Azarakhchi, Human Rights Centre; and Mr. Hugo Schally, Chairman, Montreal Protocol Implementation Committee. In addition, Mr. Vladimir Demkin, Head, Information and Analysis Division, Ministry for Environmental Protection and Nuclear Safety of Ukraine made a presentation on the experience of Ukraine with the Implementation Committee of the Montreal Protocol. Mr. Ahmed Fathalla, Legal Adviser, Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, provided an update on the negotiations under way in the Consultative Sub-Group of legal and technical experts relating to the possible establishment of a mechanism for monitoring implementation and compliance with the Basel Convention.

Three discussants gave their views: Mr. David Victor, Project Leader, Implementation and Effectiveness of International Environmental Commitments, International Institute for Applied Systems Analysis (IIASA), on lessons learned from other consultative and dispute settlement procedures; Dr. C.S. Sinha, Fellow and Convenor, Centre for Global Environment and Research, Tata Energy Research Institute (TERI), on the role of non-governmental organizations and experts, and the concerns of developing countries in a multilateral process; and Mr. Jake Werksman, Programme Director, Climate Change and Energy Programme, Foundation for International Environmental Law and Development (FIELD), on a review of the responses to the AG13 questionnaire on the design of a multilateral consultative process: points of consensus and common ground.

After the above-mentioned presentations, the floor was opened for questions. This was followed by a general debate on possible approaches to the design of a multilateral consultative process under Article 13 of the Convention.

The following list highlights the principal issues that were considered during the presentations and the general debate. The list is not in order of priority and is not intended to prejudice either the discussion on the multilateral consultative process at the next session of AG13 or the emphasis that individual Parties may choose to place on any item in the list.

LESSONS LEARNED FROM OTHER PROCEDURES:

1. Evolution

The procedures set forth in the conventions established under the ILO, the dispute settlement regime established by the WTO/GATT, the human rights instruments and the Implementation Committee of the Montreal Protocol, provide examples of a range of consultative and dispute resolution mechanisms that have evolved as a result of time, experience and political expediency.

2. Complementarity

In addition, these models establish internal procedures and approaches that are complementary and mutually supportive.

3. Cooperation

Most of the procedures described seek, through cooperation with States, to facilitate the implementation of the instrument concerned.

4. Bilateral vs. multilateral procedures

There was a marked contrast between the dispute settlement procedures of the World Trade Organization and the multilateral procedures employed by the other regimes considered. This is because the WTO regime is essentially of a bilateral and economic/trade character, whilst the other regimes tend to function at the multilateral level.

5. Structured process

The benefits of a clear and formal process were remarked upon. Even in a process that relies on flexibility and cooperation, a clear structure, which could include a standing committee, would be desirable.

6. Publication of reports and enhanced compliance

Many of the consultative/dispute settlement procedures that were described make provision for the publication of reports, some of which attract publicity, a fact that provides an additional incentive to many States to achieve compliance. Moreover, the knowledge that stronger measures could be applied, if necessary, tends to enhance compliance.

LESSONS FOR THE DEVELOPMENT OF A MULTILATERAL CONSULTATIVE PROCESS:

7. Transparency and non-confrontation

A multilateral consultative process should operate in a transparent, non-confrontational, facilitative and non-adversarial manner.

8. Accurate and full reporting of data

A key requirement of an effective multilateral consultative processes is the availability of data that are full and accurate.

9. Role of non-State entities

Entities other than States could make valuable contributions to the operation of a multilateral consultative process. These entities would include the subsidiary bodies of the Convention and non-governmental organizations. Whatever regime was developed, the secretariat would have a central role in its operation.

10. Assistance to States

In developing a multilateral consultative process, attention should be given to a number of approaches that promote compliance, ranging from technical assistance, capacity building, country studies and other practical measures, to procedures for the supervision of compliance.

11. Linkages

A multilateral consultative process under Article 13 would not stand alone. It would operate in concert with other Articles that are concerned with observance of the Convention's obligations.

12. Sovereignty of States

It is important in developing and applying a multilateral consultative process that States do not feel that their sovereignty is thereby compromised. The success of such a process is highly dependent on States feeling comfortable not only with the procedures, but also with the actions taken as a result of them. This does not mean, of course, that a multilateral consultative process should aim for the lowest common denominator. The obligations set out under a convention may well justify developing a strong multilateral consultative process. It will, however, inevitably take time to build up the necessary confidence in such a process.

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